

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ARROW TRANSPORTATION COMPANY

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 86-194

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a Notice and Order Civil Penalty for \$1,000 for causing or allowing the emission of an objectionable odor from appellant's property located at 6737 Corson Avenue South, in Seattle, Washington, on September 12, 1986, came on for hearing before the Pollution Control Hearings Board on January 27, 1987, in Lacey, Washington. Seated for and as the Board were Lawrence J. Faulk, Chairman (presiding), and Wick Dufford, and Judith A. Bendor. The proceedings were offically reported by Sherry Davidson of Gene Barker & Associates. Respondents elected a formal hearing pursuant to RCW 43.21B.230.

1 Appellant was represented by Fred Beam, Environmental Coordinator
2 for Arrow Transportation Company. Respondent Agency was represented
3 by its attorney Keith D. McGoffin.

4 Witnesses were sworn and testified. Exhibits were examined. From
5 the testimony heard and exhibits examined, the Board makes these

6 FINDINGS OF FACT

7 I

8 Appellant Arrow Transportation Company (Arrow) is a commercial
9 trucking company. In order to haul different products for various
10 customers, the appellant periodically washes the tanker containers at
11 his Seattle facility.

12 One substance hauled is a highly odoriferous material produced at
13 a pulp mill in Oregon. This material is transported up the interstate
14 to a processor in Anacortes. After delivery is made, six to seven
15 trucks per month are brought into the Seattle terminal for cleaning in
16 order to allow them to be loaded with different and incompatible
17 products. In the process odors are released.

18 II

19 Respondent Puget Sound Air Pollution Control Agency (PSAPCA) is a
20 municipal corporation with the responsibility for conducting a program
21 of air pollution prevention and control in a multi-county area which
22 includes the site of the appellant's facility.

1 PSAPCA, pursuant to RCW 43.21B.260 has filed with this Board a
2 certified copy of its Regulation I (and all amendments thereto), which
3 is noticed.

4 III

5 On the afternoon of September 12, 1986, PSAPCA received a
6 complaint from a neighbor who lives about 400 feet from appellants'
7 facility. The complainant was being affected by an odor she found
8 highly objectional. She testified that the odor made her nauseous and
9 dizzy and that she had difficulty breathing.

10 Respondent Agency's inspector that afternoon, at approximately
11 3:30 p.m., visited and spoke with the complainant and personally
12 sniffed and verified a noticeable and distinct pulp mill odor with
13 unpleasant characteristics.

14 The inspector, during his visit, rated the odor as equivalent of a
15 "2" on an odor rating scale ranging from 0 to 4, and delineated as
16 follows:

17 0 - No detectable odor

18 1 - Odor barely detectable

19 2 - Odor distinct and definite, any unpleasant characteristics
20 recognizable

21 3 - Odor strong enough to cause attempts at avoidance

22 4 - Odor overpowering, intolerable for any appreciable time.

1 This rating scale is used by PSAPCA not as a regulatory standard, but
2 as a shorthand method for preserving impressions for evidentiary
3 purposes.

4 The inspector noted that the wind was coming from the direction of
5 Arrow's facility.

6 IV

7 Later on during the afternoon of September 12, 1986, the inspector
8 proceeded to Appellant's facility and detected the same odor. The
9 inspector contacted Mr. Bud Hill, Arrow's Division Manager, and
10 advised that he had just verified an odor complaint. There was no
11 washing of tanker containers occurring at that time; however, there was
12 a parked tanker on site with an atmospheric vent which allowed air
13 emissions. This particular tanker contained the pulp mill product -
14 colloquially called "terps" - which Arrow hauls. This product is a
15 crude terpentine containing hydrogen sulfide, mercaptans, and phenol
16 chemicals. In the vicinity of this tanker, PSAPCA's inspector noted
17 the odor at "3" on the intensity scale (strong enough to cause
18 attempts at avoidance).

19 V

20 On September 15, 1986, Notice of Violation (No. 021655) was issued
21 to Arrow Transportation Company for allegedly violating Section
22 9.11(a) of PSAPCA Regulation I and WAC 173-400-040(5) on September 12,
23 1986.

24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB NO. 86-194

VI

On October 23, 1986, Notice and Order of Civil Penalty No. 6535 was sent to appellant assessing a penalty of \$1,000 for the alleged violations on September 12, 1986. From this, appellant appealed to this Board on October 30, 1986.

VII

The Board finds on the record before it, that the odors complained of emanated from Appellant's facility and that they did, in fact, unreasonably interfere with the enjoyment of life, and property on the date involved here.

VIII

Presence of the pulp mill product at Arrow's Seattle facility has been the source of an odor problem in the neighborhood for a number of years. Arrow purchased the trucking operation which handles the material, about two years ago, and, thus, inherited the problem relatively recently.

Since taking over, Arrow has shown some interest in correcting the problem. Deodorants have been tried without success. Tanker washing is now done at night.

But, even so, strong offensive odors can, as in the instant case, be vented from loaded tankers simply parked on the site. Six complaints have been received by the agency since the incident of September 12, 1986.

1 The company is exploring with its customer the use of a dedicated
2 piece of equipment - a pressurized tanker that would emit no odors
3 while loaded and would not need to be cleaned. However, no such
4 arrangement has been finalized.

5 IX

6 Any Conclusion of Law which is deemed a Finding of Fact is hereby
7 adopted as such.

8 From these Findings of Fact, the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 The Board has jurisdiction over these persons and these matters
12 Chapters 43.21 and 70.94 RCW.

13 II

14 Under terms of Section 9.11 (a) of PSAPCA Regulation, certain air
15 emissions are prohibited. This section reads as follows:

16 (a) It shall be unlawful for any person to
17 cause or permit the emission of a contaminant in
18 sufficient quantities, and of such characteristics and
19 duration as is, or is likely to be, injurious to
20 human health, plant or animal life, or property, or
which unreasonably interferes with the enjoyment
of life and property.

21 WAC 173-400-040(5) is substantially to the same effect. This
22 formulation parallels the definition of "air pollution" contained in
23 the State Clean Air Act at RCW 70.94.030(2). The language is similar
24 to the traditional definition of nuisance. See RCW 7.48.010.

25
26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
27 PCHB NO. 86-194

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

III

On September 12, 1986, odors emanating from appellant's plant wafted onto nearby property and had such effects on the enjoyment of life and property as to violate Section 9.11(a) of Respondent's Regulation I, and WAC 173-400-040(5).

IV

Here the problem is of long duration. Although Arrow's current attitude is cooperative, and its good intentions are credible, it has not in two years implemented a solution. While such a solution is sought, the neighbors must bear the burden of the offensive odors.

Under all the facts and circumstances, we do not believe the penalty assessed here was unreasonable.

V

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER

Notice and Order of Civil Penalty Number 6535 issued by PSAPCA is affirmed.

DONE this 6th day of May, 1987.

POLLUTION CONTROL HEARINGS BOARD

Lawrence J. Faulk 5/5/87
LAWRENCE J. FAULK, Chairman

Wick Dufford
WICK DUFFORD, Member

Judith A. Bendor
JUDITH A. BENDOR, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB NO. 86-194